



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

January 12, 1999

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, D.C. 20554

RE: CC Docket No. 96-45
DA 98-2410

ATTN: Common Carrier Bureau, Accounting Policy Division

Dear Secretary Salas:

Enclosed for filing and consideration in the above-captioned proceeding are Reply Comments on the Joint Board's Second Recommended Decision on behalf of the Pennsylvania Public Utility Commission. An original and six (6) copies are included. Additionally, I have also enclosed a copy to be time-stamped and returned to me in the attached self-addressed envelope.

Our comments are crucial to the Commission's consideration of the filing, and address important underlying issues of state concern.

Very truly yours,

David E. Screven
Assistant Counsel

Enclosures

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Before the
Federal Communications Commission
Washington, D.C. 20554

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|------------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| Federal-State Joint Board on |) | CC Docket No. 96-45 |
| Universal Service's Second |) | DA 98-2410 |
| Recommended Decision |) | |

**REPLY COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY
COMMISSION ON JOINT BOARD'S SECOND RECOMMENDED DECISION**

I. Introduction and Summary

The Pennsylvania Public Utility Commission (PaPUC) respectfully submits these comments concerning the Second Recommended Decision. As an initial matter, the PaPUC generally supports the Joint Board's recommendation to the extent that it furthers the fundamental principles guiding development of a national policy for universal service.

The PaPUC believes that it is appropriate for the federal government to assume some cost responsibility for a federal universal service fund under the 1996 Act. The PaPUC believes that the extent of that federal commitment should, at a minimum, continue at the current support structure with a view to adjusting the federal contribution upward in direct proportion to the increased use of the telecommunications network for purposes subject to federal authority. The PaPUC also believes that the states must

continue to play a supplemental role in proportion to the use of the telecommunications network for purposes subject to the states' traditional authority.

The PaPUC further believes that, to the extent the increased use of the telecommunications network is for purposes subject to federal authority, the federal contribution to maintaining universal service must be proportionate to that authority. Because the current level of support under the federal universal service mechanism has proven adequate, it must be the minimum standard going forward and must be increased to reflect the increased uses of the telecommunications network for purposes subject to federal authority.

The PaPUC also believes that the federal high cost fund should be based on an acceptable cost benchmark, with some variation for the unique situations facing some states, especially states with large rural populations, and should provide support to any state in which the costs in a study area are above a previously determined acceptable level of cost. The acceptable level of cost must be developed with a view to preserving rates in high cost areas that are reasonably comparable to those in lower cost urban areas. In determining what constitutes "reasonably comparable" rates, the Commission should take into account the lower levels of economic development and income, as well as the higher costs of transportation, health, and education, that are characteristic of the non-urban areas of America targeted for universal service support.¹

¹ See, generally, Parker, Edwin B. and Hudson, Heather E, *Electronic Byways: State Policies for Rural Development Through Telecommunications*, (Westview Press: The Aspen Institute), 1992.

The PaPUC, however, disagrees with the tentative recommendation of the Joint Board governing the inclusion of intrastate revenues into the base for assessing any federal contribution to universal service. The PaPUC agrees with Bell Atlantic - Pennsylvania, Inc. that such an approach, if adopted, is contrary to the 1996 Act and should be rejected. The PaPUC believes that including intrastate revenues for purposes of determining the base for federal contributions effectively shifts responsibility for the federal contribution from the interstate providers of telecommunications services to the intrastate providers of local telecommunications services.

The PaPUC agrees with Bell Atlantic - Pennsylvania, Inc. that the Commission should not revisit its finding that assessments for the federal high-cost fund should be based only on interstate end-user revenues. Even aside from the legal issue, tapping intrastate revenues for the federal fund would undermine the states' efforts to meet their primary responsibility of maintaining universal service within the state by reducing the revenue base for intrastate assessments.

This assessment approach would require the local providers of telecommunications services to pay "twice" for universal service (i.e., once at the federal level and again at the state level). However, interstate providers of long distance services would only have to contribute once i.e., at the federal level. The PaPUC believes such an approach is not competitively neutral, discriminates against the providers of local telecommunications

services, and will harm the state and federal governments' efforts to preserve universal service.²

II. Federal High-Cost Funding Should Be Limited To Those States That Require Federal Support to Maintain Affordable Rates, As The Joint Board Recommends.

The 1996 Act requires that telephone service be available at just, reasonable, and affordable rates. 47 U.S.C. 254(b)(1). As the Joint Board accurately finds, most Americans find telephone service affordable today. *See Second Recommended Decision*, FCC 98J-7, 39 (rel. Nov. 25, 1998) (“2d R.D.”) (“[R]ates today are generally affordable and subscribership is currently high in most areas of the nation.”). Because rates in urban areas are affordable, rates in rural, insular, and high cost areas must be “reasonably comparable” to those in urban areas to be likewise affordable.³ *See* 47 U.S.C. 254(b)(3), which requires such comparability. As the Joint Board found, ensuring comparability of rates is a shared federal-state responsibility under the Act. 2d R.D. at 37, citing 47 U.S.C. 254(b)(5) (“There should be specific, predictable and sufficient *Federal and State* mechanisms to preserve and advance universal service.” (emphasis added)).

² The alternative approach i.e., permitting the states to include interstate revenues for intrastate purposes, might be acceptable but is so fraught with controversy that the best approach is simply to preserve the current conceptual framework while allowing for adjustments in the contents of interstate and intrastate services based on an evolving understanding of telecommunications services.

³ Although income levels also play a role in affordability, low-income support issues have been resolved in earlier phases of this proceeding and are not addressed here.

Therefore, although each state has the right to determine the best way to achieve this result, the 1996 Act leaves the initial responsibility to individual states to ensure that rates in high-cost areas are reasonably comparable to those in low-cost urban areas. In some states, this requirement may be fulfilled through mechanisms that are already in place, and, in any event, the Commission should endorse the Joint Board's view that no state is obligated to establish an intrastate universal service fund. 2d R.D. at 38. As the Joint Board found, however, federal support is needed only for those states that "face significant obstacles in maintaining reasonably comparable rates." *Id.* at 40. Otherwise, there is no public interest served by requiring ratepayers in one state to support rates in high cost areas of another state. The Commission should affirm that finding.⁴

The method the Joint Board recommended to achieve that result is to adopt a national cost benchmark and to compare that benchmark with the average costs within each study area (generally all areas of a state served by a carrier). *Id.* at 43. The federal fund would provide support only where a state's costs within a study area significantly exceed the national benchmark. In this way, cost variations within individual states will be averaged out, confining the federal fund to those states that experience unusually high costs. States' universal service mechanisms would provide the support needed to ensure comparability among high- and low-cost areas within the state, as the Act requires. The

⁴ As indicated above, however, there must be an adjustment mechanism for the situations facing individual states in light of the challenges outlined in, among other things, states with rural populations illustrated in *Electronic Byways*.

Commission should adopt the Joint Board's recommendation in this regard consistent with the comments set forth above.

III. Conclusion

Accordingly, the Commission should adopt a high cost universal service fund that is, at a minimum, comparable in size and scope to the current fund, with assessments based on interstate end user revenues and also based on an evolving understanding of what constitutes use of the telecommunications network for purposes subject to federal authority.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I, David E. Screven, hereby certify that I have on this 12th day of January served a true and correct copy of the Reply Comments on the Joint Board's Second Recommended Decision on behalf of the Pennsylvania Public Utility Commission (PaPUC) upon the persons and in the manner indicated below:

Via Federal Express


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DATED: January 12, 1999